

**REPORT ON EXAMINATION**  
**OF**  
**PECONIC LANDING AT SOUTHOLD, INC.**  
**AS OF**  
**DECEMBER 31, 2005**

**DATE OF REPORT**

**APRIL 20, 2007**

**EXAMINER**

**EDOUARD MEDINA**

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STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

Eliot Spitzer  
Governor

Eric R. Dinallo  
Superintendent of Insurance

April 20, 2007

Honorable Eric R. Dinallo  
Superintendent of Insurance  
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law and in compliance with the instructions contained in Appointment Number 22544, dated September 6, 2006 attached hereto, I have made an examination into the condition and affairs of Peconic Landing at Southold, Inc., as of December 31, 2005, and submit the following report thereon. Peconic Landing at Southold, Inc. is a not-for-profit Continuing Care Retirement Community licensed pursuant to the provisions of Article 46 of the Public Health Law.

Wherever the designations “the Community” or “Peconic Landing” appear herein without qualification, they should be understood to indicate Peconic Landing at Southold, Inc. The examination was conducted at the offices of the Community at 1500 Brecknock Road; Greenport, NY.

As of December 31, 2004, the Community’s required actuarial surplus, as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$1,367,244.

The Community is currently operating under a Plan of Restoration (“Plan”) that was accepted by the New York Insurance Department on October 12, 2006. The Plan of Restoration relies on increasing fees in line with the increase in the operating expenses. The projected date for the removal of the impairment under the Plan was December 31, 2006.

## **1. SCOPE OF THE EXAMINATION**

The Community was formed on December 30, 1994. This examination covered the period from the time the Community commenced operations, August 15, 2002 through December 31, 2005. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination comprised a complete verification of assets and liabilities as of December 31, 2005 in accordance with Generally Accepted Accounting Principles (GAAP), as modified by the Department pursuant to Insurance Department Regulation 140 {11 NYCRR 350}, a review of income and disbursements deemed necessary to accomplish such verification, and utilized, to the extent considered appropriate, work performed by the Community's independent certified public accountants. A review was also made of the following items:

- Community Documents
- Growth of the Community
- Financial Documents
- Board of Directors meeting minutes
- Market Conduct

This report on examination is confined to financial statements and comments on those matters that involve departures from laws, regulations or rules, or which are deemed to require explanation or description.

Representatives of the New York Insurance Department and the New York Department of Health conducted a site survey of the Community's facility on September 28, 2006 pursuant to Section 4610 of the New York Public Health Law.

## **2. EXECUTIVE SUMMARY**

The results of this examination revealed certain operational deficiencies during the examination. Significant findings relative to this examination are as follows:

- As of December 31, 2004, the Community's required actuarial surplus, as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$1,367,244. The Community is currently operating under a Plan of Restoration ("Plan") that was accepted by the New York Insurance Department on October 12, 2006.
- The Community's Disaster Recovery Plan is silent relative to the transportation of its residents during an evacuation.
- The Community's management agreement failed to adequately provide for management services relative to periods of insolvency.
- The Community failed, during the examination period, to file its annual statement and audited financial statement with this Department and the Department of Health within the time frames prescribed by Section 4607 of the Public Health Law.

## **3. DESCRIPTION OF THE COMMUNITY**

Peconic Landing is a Continuing Care Retirement Community as defined under Article 46 of the New York Public Health Law and received a Certificate of Authority from the New York State Continuing Care Retirement Council effective July 31, 1998. The Community commenced operations on August 15, 2002.

Peconic Landing is organized as a co-operative lifecare community and offers a range of services from totally independent living, through occasional health care in independent living units, daily personal care in the enriched housing (assisted living) units and full time skilled nursing units.

Residents of the Independent Living Units pay an entrance health care reserve fee, purchase shares in Peconic Landing Housing Association Cooperative, Inc. (Co-operative) and enter into a Care Agreement Contract under which such residents have the right to occupy an independent living unit for the remainder of their life, or until such time as they need to be transferred to enriched housing units or to the skilled nursing units. The enriched housing units and skilled nursing units may be occupied by individuals who are not residents with lifecare contracts, but who pay on a per-diem basis. However, lifecare residents have priority access to enriched housing units and the skilled nursing unit facilities.

Residents pay monthly fees related to their occupancy of an independent living unit, enriched housing unit, or a skilled nursing unit according to a care and subscription agreement entered into by Peconic Landing, the Co-operative and the residents. If the care and subscription agreement is terminated within the first 90 days of occupancy, the health care reserve fee is fully refundable. Subsequent to 90 days, the amount of the health care reserve will be reduced by a four percent processing fee, and an additional two percent per month of occupancy. After 48 months, no amount will be refundable.

The Community consists of 250 independent living units, 26 enriched housing beds, 44 nursing beds, several dining rooms, common areas, and a kitchen area that supports the operation of the dining services.

#### A. Management

Pursuant to the Community's charter and by-laws, management of the Community is vested in a board of directors composed of no less than seven members. As of the examination date, the board of directors was comprised of 13 members. The Community's board of directors as of December 31, 2005 was as follows:

Board of Directors

<u>Name</u>	<u>Principal Business Affiliation</u>
John M. May Southold, New York	Management consultant
Paul J. Connor III Mattituck, NY	President & CEO, Eastern Long Island Hospital
Thomas B. Doolan Southold, NY	President & CEO, Southampton Hospital
Rosamond Phelps Baiz Southold, NY	Owner, The Old Fields Vineyards
Luke Bobcock Sag Harbor, NY	Employee, Saybrook Capital, LLC
Jerry Callis Southold, NY	Retired
Gregory N. Ferraris Sag Harbor, NY	Banducci, Katz & Ferraris
Robert T. Goldman New Suffolk, NY	Employee, Capital Cities
Alice Hussie Southold, NY	Owner, Alice Hussie Real Estate
Lisa Israel Greenport, NY	Co-owner, Richmond Realty Corp.
Rev. Peter M. Larsen Southampton, NY	Member of the Clergy, Episcopal Church

Sandra Novick  
Southold, NY

Employee,  
Bridgehampton National  
Bank

William G. Thompson  
Greenport, NY

Retired

The board is required to meet once each year for an annual meeting, but may hold special meetings as desired. At least four meetings were held during each fiscal year of the examination period. A review of the minutes of meetings of the Community held during the examination period indicated that all board meetings held were well attended.

The principal officers of the Community, as of December 31, 2005, were as follows:

Officers

Robert Syron

Steven Carroll

John May

Title

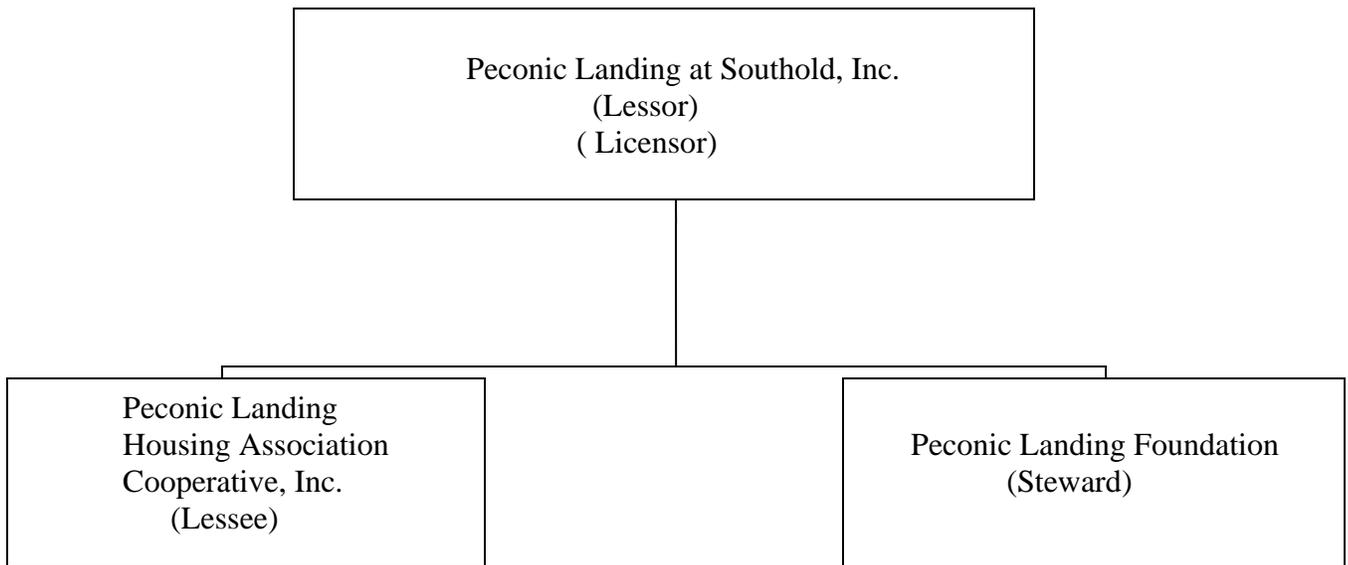
Chief Executive Officer

Chief Financial Officer

President and Treasurer

## B. Holding Company System

The structure of the Holding Company, as of the examination date, was as follows:



### Peconic Landing Housing Association, Inc. (Co-operative)

Peconic Landing Housing Association, Inc. is a cooperative corporation formed to provide cooperative housing units to Community members who purchase shares in the corporation and enter into Care Agreements with Peconic Landing at Southhold, Inc.

As such, the independent living units are owned as cooperative housing by the Community's residents.

Peconic Landing, pursuant to a Long Term Lease Agreement, leases a portion of its real property to the Co-operative for the cooperative residential portion of the Community. The Co-operative owns the improvements on the leased premises which

include cooperative housing units used for the independent housing component of the Community.

As per the Long Term Lease Agreement, upon commencement of the lease term, the Co-operative has agreed to pay, before delinquency, all charges for utilities, including, but not limited to, gas, electricity, light, heat, water, power and telephone or other communication service used, rendered or supplied, upon or in connection with the leased premises and the residential improvements.

According to the terms of the agreement, the residential improvements are the property of Co-operative, and Peconic Landing shall not have the right to remove said residential improvements from the leased properties without the Co-operative's prior written consent.

According to the agreement, the Co-operative is responsible for the payment of all real property taxes, all necessary repairs and replacements to keep the residential area, the parking area, the sidewalks, and the curbs clean.

#### Peconic Landing Foundation (Foundation)

Under the Stewardship Agreement, made between Peconic Landing at Southold,, Inc (Licensor) and the Brecknock Hall Foundation (Steward), Peconic Landing granted to the Steward a license for the purpose of maintaining, repairing, improving and operating the historic structure of Brecknock Hall. However, it is noted that, according to the agreement, the facilities, including Brecknock Hall remain the property of Peconic Landing at Southold, Inc.

The Stewardship Agreement is effective July 1, 2005 through June 30, 2015.

The Community did not seek the New York Department of Health's approval for its Stewardship Agreement.

It is recommended that the Community seek the New York Department of Health's approval for its Stewardship Agreement.

### C. Occupancy Rates

The occupancy rates for the four year period ending December 31, 2006 were as follows:

	2003	2004	2005	2006
Independent Living Units	78%	90.4%	96%	96%
Enriched Housing	38.4%	44.2%	65.4%	96.2%
Skilled Nursing Units	50%	63.6%	81.8%	95.1%

### D. Refunds.

Section 4609.4 of the New York Public Health Law states in part,

"Any refund made pursuant to this section must be paid no later than thirty days after the formerly occupied unit has been resold, but in no event later than one year after the formerly occupied unit has been vacated."

The examiner reviewed three cases of residents in which refunds were processed during 2005. In one case, the resident's proceed check was issued in excess of the thirty day time frame prescribed by Section 4609.4 of the New York Public Health Law.

It is recommended that the Community comply with Section 4609.4 of the New York Public Health Law relative to the issuance of refund proceeds within the time period prescribed by such section of the New York Public Health Law.

### E. Disaster Recovery Plan

It was noted that the transportation procedures for resident evacuation were not included in the Community's Emergency Procedures Manual.

It is recommended that the Community include specific transportation procedures for the evacuation of its residents within its Emergency Procedures Manual.

### F. Management Agreement

The Community and its management consulting firm, as of the time of examination, maintained a Management Agreement which set forth the services to be provided by such management consulting firm.

Section 8.1 of the Management Agreement states, in part, as follows:

“The occurrence of one (1) or more of the following events shall constitute a Sponsor's Default hereunder..:

Sponsor's becoming insolvent or unable to pay its debts as they mature....”

It is recommended that, as a prudent business practice, the captioned agreement be revised so as to state that, if insolvency of the Community (sponsor) shall occur, and in respect to all existing insolvency laws and regulations, the Manager can terminate the Management Agreement only after, at least, a ninety day notice is given to the Community.

### G. . Residents' Health Coverage

Regarding residents' health coverage, Section 4608.14 of the New York Public Health Law further states as follows:

“A statement that:

a. the resident shall, if eligible, enroll in Medicare parts a and b or the equivalent and shall continue to maintain that coverage, together with Medicare supplement coverage at least equivalent in benefits to those established by the superintendent as minimum benefits for Medicare supplement policies;

b. if the resident fails to maintain Medicare coverage and a Medicare supplement coverage, or is ineligible for such coverage and fails to purchase the equivalent of such coverage, the Community shall purchase the coverage or equivalent coverage on behalf and at the expense of the resident and shall have the authority to require an appropriate adjustment in payments by the resident to the community;

c. if the community cannot purchase Medicare coverage and Medicare supplement coverage or the equivalent, the Community shall have the authority to require an adjustment in monthly fees, subject to the approval of the superintendent, to fund the additional risk to the facility; and

d. if the resident fails to purchase or maintain Medicare coverage and Medicare supplement coverage or the equivalent, and the community has not purchased such coverage, the Community will be responsible for any expenses which would have been covered by Medicare and Medicare supplement coverage. The Community may add the amount of such expenses to the resident's monthly fees."

The Community monitors the residents' coverages on an annual basis. The Plan, at the time of examination, was in the process of putting in place a methodology for monitoring such coverage on a more frequent basis.

It is recommended that Community continue to put a system in place that would provide for the monitoring of the resident's Medicare and Medicare Supplement coverages on a more frequent basis.

#### H. Custodial Agreement

A review of the Community's custodial agreement for its investments revealed that the safeguards and controls as required by this Department were not in place. It is recommended that the Community amend its custodial agreement to include the following listing of safeguards and controls:

1. The bank shall have in force, for its own protection, Bankers Blanket Bond Insurance of the broadest form available for commercial banks and will continue to maintain such insurance. The bank will give the Community 60 days written notice of any material change in the form or amount of such insurance or termination of this coverage.

2. The bank will at all times give the securities held by the bank thereunder the same care the bank gives its own property of a similar nature.

3. Furnish the Community (at least quarterly) with a list of such securities showing a complete description of each issue, which shall include the number of shares or par value of bonds so held at the end of such quarter.
4. Maintain records sufficient to verify information we are required to report in the Annual Statement blank of the Insurance Department of the State of New York.
5. The bank shall furnish the Community with the appropriate affidavits in an acceptable form in order for the securities referred to in such affidavits to be recognized as admitted assets of the Community.
6. Access shall be during the bank's regular hours. Those persons who shall be entitled to examine, on the bank's premises, securities held by the bank and the bank's records related to those securities, shall be specified. An authorized officer shall furnish the bank with written instructions to that effect.
7. Written instructions hereunder shall be signed by any two of the Community's Authorized Officers specified in a separate list for this purpose which will be furnished to the bank from time to time signed by the treasurer or an assistant treasurer and certified under the corporate seal by the secretary or an assistant secretary.
8. In connection with any situation involving registration of securities in the name of a nominee of a bank custodian, the custodian agreement should empower the bank to take such action.
9. There should be a provision in the agreement that would give the Community the opportunity to secure the most recent report on the review of the custodian's system of internal controls, pertaining to custodian record keeping, issued by internal or independent auditors.

## J. Accounts and Records

### 1. Allocation of expenses

An instance of error was noted relative to the allocation of utility expenses between Peconic Landing and the Co-operative during the review of expenses.

In light of the above, it is recommended that the Community exercise better care, in the future, when allocating the utility expenses to the books of the Co-operative.

### 2. Annual Statement filing

Section 4607.1 of the New York Public Health Law states the following:

"S 4607. Annual statement. 1. Within four months of close of the operator`s fiscal year, unless an extension of time to file has been granted, the operator shall file an annual statement with the commissioner and superintendent showing the condition as of the last day of the preceding calendar or fiscal year. If the commissioner and superintendent do not receive the annual statement within four months of the end of the operator`s fiscal year or have not granted an extension of time to file, the council may charge a late fee."

For years 2003, 2004 and 2005, the Community failed to file its annual statement with the New York Insurance Department and the New York Department of Health within the filing time frame prescribed by of Section 4607.1 of the New York Public Health Law.

It is recommended that the Community file its annual statement within the time period prescribed by Section 4607.1 of the New York Public Health Law.

#### **4. FINANCIAL STATEMENTS**

##### **A. Balance Sheet**

The following shows the assets, liabilities and surplus as determined by this examination as of December 31, 2004. It is the same as the actuarial balance sheet filed by the Community and is presented on a statutory accounting basis, pursuant to Insurance Department Regulation 140 {11 NYCRR 350}:

##### **ASSETS**

Cash and Investable Assets	\$	12,533,990
Account Receivables		2,022,384
Real Estate Related to the Community(Net of Dep)		105,316,831
Furniture & Equipment(Net of Dep)		9,791,818
Deferred Financing Costs(net of Dep)		3,818,213
Deferred Marketing Costs		3,349,256
Escrow Account		<u>1,747,285</u>
Total Assets	\$	<u>138,579,777</u>

## LIABILITIES

Loans	\$	\$36,309,075
Actuarial Reserve		92,602,802
Other Liabilities		11,035,144
Total Liabilities	\$	<u>\$139,947,021</u>
Actuarial Surplus as of December 31, 2004		(1,367,244)
Total Surplus and Liabilities		<u>\$138,579,777</u>

Note 1: It is noted that the asset values herein are reported on a statutory/actuarial basis. As such, the values differ from the certified financial statements prepared by the Community's Certified Public Accountants.

Note 2: As of December 31, 2004, the Community's required surplus, as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$1,367,244. The Community is currently operating under a Plan of Restoration ("Plan") that was accepted by the New York Insurance Department on October 12, 2006.

**B. Statement of revenue, expenses and net worth**

The statement of revenue and expenses is presented on a GAAP basis with applicable statutory accounting requirements for the period, August 15, 2002 through December 31, 2005.

**REVENUES, GAINS AND OTHER SUPPORT**

Residents Services (including Amortization of Healthcare Reserve fees)	\$31,999,996
Health Care Services	6,859,221
Residents Options Upgrades	379,199
Remarketing Fee Revenue	630,301
Investment Income	1,654,0449
Contributions	60,959
Net Assets Released from Restrictions	467,770
Other	<u>971,731</u>
<b>Total Revenues, Gains, and Other Support</b>	<b>\$43,023,221</b>

**OPERATING EXPENSES**

Health Care	\$11,611,961
Dietry	6,129,435
Administration and General	14,727,993
Maintenance and Security	5,890,352
Housekeeping and Laundry	1,701,101
Depreciation and Amortization	16,735,396
Interests	11,733,206
Interests on Resale of Units	1,251,033
Resident Option Grades	<u>325,439</u>
<b>Total Operating Expenses</b>	<b><u>\$70,105,916</u></b>
 <b>Operating Loss</b>	 <b><u>\$(27,082,695)</u></b>

## **5. MARKET CONDUCT REVIEW**

The examination included a market conduct review focusing on the following major areas:

- a) Underwriting, sales, and advertising
- b) Disclosure statement
- c) Care Agreement

No unfair practices were noted. .

## **6. CONCLUSION**

As of December 31, 2004, the Community's required actuarial surplus, as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$1,367,244.

The Community is currently operating under a Plan of Restoration ("Plan") that was accepted by the New York Insurance Department on October 12, 2006. The Plan of Restoration relies on increasing fees in line with the increase in the operating expenses. The projected date for the removal of the impairment under the Plan is December 31, 2006.

## **7. SUMMARY OF COMMENTS AND RECOMMENDATIONS**

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A	As of December 31, 2004, the Community's required actuarial surplus, as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$1,367,244. The Community is currently operating under a Plan of Restoration ("Plan") that was accepted by the New York Insurance Department on October 12, 2006.	1,3,16,18
B	It is recommended that the Community seek the New York Department of Health's approval for its Stewardship Agreement.	8
C.	It is recommended that the Community comply with Section 4609.4 of the New York Public Health Law relative to the issuance of refund proceeds within the time period prescribed by such section of of the New York Public Health Law.	9
D	It is recommended that the Community include specific transportation procedures for the evacuation of its residents within its Emergency Procedures Manual.	10
E	It is recommended that, as a prudent business practice, the management agreement be revised so as to state that, if insolvency of the Community (sponsor) shall occur, and in respect to all respect to all existing insolvency laws and regulations, the Manager can terminate the Management Agreement only after, at least, a ninety day notice is given to the Community.	10
F	It is recommended that Community continue to put a system in place that will provide for the monitoring of the residents' Medicare and Medicare Supplement coverages on a more frequent basis.	11
G	It is recommended that the Community amend its custodial agreement to includes the listed safeguards and controls.	11

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| H. | It is recommended that the Community exercise better care, in the future, when allocating the utility expenses to the books of the Co-operative.      | 13 |
| I  | It is recommended that the Community file its annual statement within the time period prescribed by Section 4607.1 of the New York Public Health Law. | 13 |

Appointment No. 22544

**STATE OF NEW YORK  
INSURANCE DEPARTMENT**

I, Howard Mills, Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

**Edouard Medina**

*as a proper person to examine into the affairs of the*

**Peconic Landing at Southhold, Inc.**

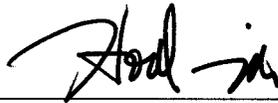
*and to make a report to me in writing of the said*

**Continuing Care Retirement Community**

with such information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed by the name and affixed the official Seal of this Department, at the City of New York.

this 6th day of September 2006



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Howard Mills  
Superintendent of Insurance

